

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHAWN L. HILL,

Defendant-Appellee.

UNPUBLISHED

February 11, 2000

No. 217244

Wayne Circuit Court

LC No. 98-011138

Before: O'Connell, P.J., and Meter and T. J. Hicks*, JJ.

PER CURIAM.

The prosecution appeals by right from an order dismissing a charge of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), after evidence obtained during defendant's arrest was suppressed. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Detroit Police Officer Joseph D'Angelo testified that he stopped defendant's vehicle to issue him a citation for operating the vehicle with a defective windshield, contrary to the City of Detroit Traffic and Motor Vehicle Ordinance. The windshield of defendant's car had a 2 to 2 1/2 foot long horizontal crack, located several inches from the bottom of the windshield. When Officer D'Angelo asked defendant for his license, defendant told him that it was suspended. Defendant was placed under arrest for driving with a suspended license, and a pat-down search revealed twenty-two packets of crack cocaine in his pants' pocket. Defendant was then advised that he was under arrest for violation of the controlled substances act.

Defendant moved to suppress the evidence, asserting that the stop of the vehicle was illegal. After conducting an evidentiary hearing and viewing the windshield, the trial court granted the motion, finding that the windshield was not defective because the crack did not render the windshield unsafe for its intended purpose.

* Circuit judge, sitting on the Court of Appeals by assignment.

A trial court's decision to grant a motion to suppress evidence will not be reversed unless it is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a

mistake has been made. *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993).

When a police officer stops someone and restrains that person's freedom to leave, the officer has seized the person under the Fourth Amendment. *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992). However, the Constitution does not prohibit all seizures, only unreasonable ones. *Id.* In determining whether a stop is reasonable, the court must examine both the character of the official intrusion and its justification. *Id.*; *Michigan v Summers*, 452 US 692, 701; 101 S Ct 2587; 69 NW2d 340 (1981). The stop must be founded on a particularized suspicion, based on an objective observation of the totality of the circumstances, that the person stopped is involved in wrongdoing. *Chambers, supra*, 121-122.

Here, the trial court improperly focused on whether an ordinance violation actually occurred rather than on the reasonableness of the officer's suspicion that an ordinance violation *may* have occurred. *People v Bordeau*, 206 Mich App 89, 92-93; 520 NW2d 374 (1994), overruled on other grounds sub nom *People v Edgett*, 220 Mich App 686; 560 NW 2d 360 (1996). The ordinance proscribes the operation of a vehicle with a defective windshield, and there was no showing that the officer acted unreasonably in stopping defendant to investigate whether he violated the ordinance because of the two foot long crack in the windshield. While the court evidently made the later determination that the crack did not render the windshield defective, that determination did not render the officer's stop of defendant illegal. Therefore, given the lack of evidence that the citation was a pretext to stop defendant for some other reason, the trial court erred in suppressing the evidence and dismissing the cocaine possession charge.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks